

Message Text

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TAGS: EIND,MX

SUBJECT: CITIZENS UTILITY COMPANY SUIT AGAINST GOM, ET AL

REF: JENKINS-FANNIN LETTER, JANUARY 28

1. DEPT HAS BEEN CONTACTED DIRECTLY BY PRESIDENT OF CITIZENS UTILITIES (ISHIER JACOBSON) WITH REQUEST THAT DEPT AND EMBASSY USE THEIR GOOD OFFICES TO ASSIST HIM IN SETTING UP MEETINGS WITH APPROPRIATE MEXICAN AUTHORITIES SO THAT THE CITIZENS UTILITY MATTER MIGHT BE SETTLED BY NEGOTIATION RATHER THAN THROUGH LITIGATION. EMBASSY WILL RECALL FROM POUCHED MATERIALS THAT SUIT WHICH HAS NOW BEEN INITIATED IN FEDERAL DISTRICT COURT IN ARIZONA IS BASED ON CONTRACT BETWEEN CITIZENS AND CIA. DE SERVICIOS PUBLICAS DE NOGALES, S.A. FOR THE PURCHASE OF ELECTRIC POWER. SEVERAL YEARS AGO SERVICIOS, THEN A PRIVATELY OWNED COMPANY, WAS PURCHASED IN ITS ENTIRETY BY THE COMISION FEDERAL DE ELECTRICIDAD (CFE) A MEXICAN FEDERAL AGENCY. SUBSEQUENT ARRANGEMENTS FOR SUPPLYING POWER TO SERVICIOS, IT IS ALLEGED, CAUSED SERVICIOS TO REFUSE TO ACCEPT POWER CALLED FOR UNDER ITS CONTRACT WITH CITIZENS. SUIT IS NOT ONLY AGAINST SERVICIOS, BUT AGAINST CFE AND MEXICAN STATE AS WELL.

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2. CITIZENS OFFICIALS HAVE BEEN ADVISED BY MEXICAN COUNSEL (CURTIS, MALLETT) THAT THEY SHOULD PURSUE EVERY POSSIBLE MEANS OF NEGOTIATING A SETTLEMENT BEFORE RESORTING TO LITIGATION. HOWEVER, CITIZENS AUTHORITIES BELIEVE THAT MATTER CAN BE SETTLED ONLY IF THEY CAN MEET WITH HEAD OF CFE AND/OR WHATEVER MEXICAN CABINET AGENCY HAS RESPONSIBILITIES IN THIS AREA, TO EXPLAIN THEIR CASE AND TO SEEK HIGH LEVEL ASSISTANCE IN REACHING A SOLUTION.

3. DEPT OFFICERS HAVE EXPLAINED TO JACOBSON THAT THIS IS A MATTER ESSENTIALLY BETWEEN THEIR COMPANY AND MEXICAN AUTHORITIES, BUT THAT WE WOULD NEVERTHELESS SEEK TO ASSIST HIM IN (A) DETERMINING WHAT MEXICAN OFFICIALS WOULD HAVE AUTHORITY TO MAKE NECESSARY DECISIONS, AND (B) SETTING UP MEETINGS SO THAT HE AND HIS LAWYER (EARL H. CARROLL OF TUCSON) COULD MEET WITH THEM. JACOBSON AND CARROLL ARE PREPARED TO COME TO MEXICO CITY AT ANY TIME FOR THIS PURPOSE.

4. WE WOULD APPRECIATE EMBASSY'S ADVICE ON ISSUE POSED PARA 3(A) ABOVE, AND ASSUME THERE WILL BE NO DIFFICULTIES IN PROVIDING ASSISTANCE IN SETTING UP APPOINTMENTS. PLEASE ADVISE. (WE FULLY RECOGNIZE THAT THIS IS IN ESSENCE A COMMERCIAL CONTRACT DISPUTE. HOWEVER, GIVEN THE OBVIOUS MEXICAN GOVERNMENT INVOLVEMENT AND THE POTENTIAL PROBLEMS WHICH WOULD BE RAISED BY LITIGATION OF THIS NATURE - SOVEREIGN IMMUNITY, ACT OF STATE, ETC. - WE BELIEVE IT DESIRABLE TO ASSIST CITIZENS OFFICIALS IN THEIR EFFORTS TO DISCUSS THE PROBLEM WITH APPROPRIATE GOM OFFICIALS. SENATOR HASKELL OF COLORADO, IN ADDITION TO SENATOR FANNIN, HAS INDICATED INTEREST.) INGERSOLL

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